

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Owen Hobbs,

Petitioner,

v.

Case No. 1:10cv172

Lebanon Correctional Institute,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Amended Report and Recommendation filed by the Magistrate Judge on November 5, 2010 (Doc. 9)¹.

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, this Court finds the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation (Doc. 9) of the Magistrate Judge is hereby **ADOPTED**. The Respondent's Motion to Dismiss (Doc. 5) is **GRANTED** and the Petitioner's Writ for Habeas Corpus (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to any claim alleged in the petition, because no claim for relief states a "viable claim of the denial of a constitutional

¹The Report and Recommendation (Doc. 8) is hereby found to be moot.

right" or presents issues that are "adequate to deserve encouragement to proceed further." See *Slack* , 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); see also 28 U.S.C. 6 § 2253(c); Fed. R. App. P. 22(b);

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order would not be taken in "good faith," and, therefore, **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

S/Michael R. Barrett
Michael R. Barrett
United States District Judge